

UTILITY PATENT
App. Serial No. 10 / 027.371
Atty. Docket No. 52484.002

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OFFICIAL

IN THE UNITED STATES PATENT & TRADEMARK OFFICE

Inventors: BERGMAN, Theodore J.
HUELSMAN, John C.
BERGMAN, Jon E.

Examiner: Robert C. Watson

Serial No.: 10 / 027,371

Art Unit: 3723

Filing Date: December 20, 2001

Title: Automotive Wheel Assembly Removal
Apparatus

CERTIFICATE OF FACSIMILE TRANSMISSION UNDER 37 C.F.R.
§ 1.8(a): I hereby certify that this correspondence is being transmitted to
the facsimile number identified below addressed to MAIL STOP:
PETITION, Commissioner for Patents, P.O. Box 1450, Alexandria, VA
22313-1450 on June 3, 2004.

By: Sean M. Casey June 3, 2004
Sean M. Casey, Reg. No. 39,514 Date Signed

Columbus, Ohio
June 3, 2004

PETITION TO WITHDRAW HOLDING OF ABANDONMENT
UNDER 37 CFR § 1.181 &
DECLARATION IN SUPPORT

VIA FACSIMILE TO (703) 872-9306

MAILSTOP PETITIONS
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

The above-identified application became abandoned for failure to file a timely and proper reply to the First Office Action, which set a 3 - month period for reply. The abandonment date of this application is May 27, 2004.

Applicant hereby petitions for revival of this application and withdrawal of the holding of abandonment and includes herewith the requisite showing of facts in support of this petition, which facts also establish that the abandonment was unavoidable and that the delay in prosecution of the instant application was not due to any fault of Applicant.

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1. Applicant's undersigned counsel prepared and filed a timely and responsive amendment and argument was transmitted by facsimile to (703) 305-3579 in response to the first office action, along with a petition on or about July 3, 2003, and included with that response the required payment of fees. See Exhibit A hereto, which is a 25 page document that includes

5 Applicant's receipt and confirmation of facsimile transmission reflecting successful transmission of 24 pages. That timely filing and the accompanying General Transmittal cover page include a certificate of facsimile transmission dated July 3, 2003, which corresponds to the date of the accompanying facsimile transmission receipt.

2. A review of undersigned counsel's notes to the applicant file in our office reveals
10 that periodically thereafter, Applicant's undersigned counsel contacted the U.S. Patent Office clerks in Technical Center 3700, who answer the telephone number TC 3700 general inquiry phones at (703) 308-1148, and confirmed that Applicant's July 3, 2003 response was perceived by the clerks answering 308-1148 to have been received.

3. Applicant's representative did not receive any further telephonic or written
15 communications from the office personnel or the examiner indicating any further action on the application in connection with Applicant's response. In the following months, upon information and belief, Applicant's undersigned representative instructed staff to continue to make telephonic inquiries and to transmit additional informal courtesy copies of the response and amendment to Examiner Watson, if he so desired, for action. Applicant's undersigned counsel also contacted
20 TC 3700 clerks and or Examiner Watson in hopes of discussing Applicant's response with the Examiner so as to advance prosecution on the merits. However, while those additional efforts are believed to be documented, the papers documenting those efforts are presently missing from the Applicant's legal files here in Columbus, Ohio. We will audit our files in attempts to locate

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those additional documents, which may have been inadvertently placed in an incorrect location or sent to storage.

4. On or about January 16, 2004, Applicant's undersigned representative again contacted TC 3700 clerks to ascertain whether any action had been taken on the instant application. No status was available and Applicant's counsel therefore prepared a written general status inquiry for the above-captioned application, which was transmitted by facsimile to the technical center at (703) 305-3579. A copy of that written inquiry is attached hereto as Exhibit B, and it evidences a certificate of facsimile transmission dated January 16, 2004, which date matches the date on the accompanying facsimile transmission receipt.

10 5. Subsequent to this written status inquiry, Applicant's representative made additional telephonic attempts to ascertain if any action had been taken on the earlier filed office action and to determine if the written status inquiry would receive a response. However, neither the assigned examiner, Mr. Watson, nor the personnel answering the TC 3700 general inquiry telephone at (703) 308-1148 could discern that either the January, 2004 written inquiry or the
15 earlier July, 2003 response to the 1st Office Action were matched to the paper file or available electronically.

6. Despite continued efforts to ascertain status and to encourage action on the instant application, Applicant's representative on or about June 1, 2004, without any other telephonic or written response from Office personnel regarding prior inquiries, received an official Notice of
20 Abandonment mailed May 27, 2004, which was received in our offices on or about June 1, 2004.

7. On the same date, Applicant undersigned counsel again contacted TC3700 clerks at 703.308.1148, Examiner Watson, and TC 3700 SPE Joe Hail to confirm that the Notice was putatively accurate and that the earlier filed papers were in fact not in Applicant's electronic or

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paper file at the Patent Office. While Examiner Watson was unable to assist in our inquiry, TC 3700 personnel answering 308-1148 did inquire and ascertain that the file appeared to have gone abandoned because Applicant's July, 2003 response was never matched to the file, which determination contravened the previous perception that the paper had at one time been identified as received and or matched to the file. Additionally, the Office electronic records did not identify Applicant's status inquiry of January, 2004.

8. Despite our attempts, the originally filed papers appear to have been misdirected and have not been matched to Applicant's file. Applicant's original filing date now exceeds 24 months, and Applicant hereby respectfully petitions the Commissioner to:

- a. Withdraw the holding of abandonment;
- b. Enter Applicants' July, 2003 Response and Amendment attached hereto into the file; and
- c. Return jurisdiction of the instant application to TC 3700, SPE Joe Hail or Examiner Watson for immediate action.

CONCLUSION

In view of the preceding testimony, the attached papers and corresponding evidence of proof of facsimile transmission, and regular attempts to correct the errors in this file, Applicant submits that the above-captioned application was unavoidably delayed during prosecution through no fault of Applicant until the time of this Petition. Accordingly, Applicant requests that the above-captioned application be revived immediately and acted upon at the earliest possible

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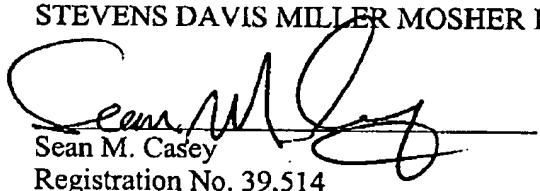
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App. Serial No. 10 / 027.371
Atty. Docket No. 52484.002

time. As all claims are believed to be allowable over the prior art of record in this Application,
Applicant also hereby solicits an early Notice of Allowance.

Respectfully submitted,

THEODORE J. BERGMAN
JOHN C. HUELSMAN
JON E. BERGMAN

BY: STEVENS DAVIS MILLER MOSHER LLP


Sean M. Casey
Registration No. 39,514

P.O. Box 710
New Albany, Ohio, 43054-0710
Telephone: (614) 933-0100
Facsimile: (614) 933-0110

EXHIBIT A



PATENT
Serial No. 10 / 027,371
Atty. Docket No. 52484.002

IN THE UNITED STATES PATENT & TRADEMARK OFFICE

Inventors: BERGMAN, Theodore et al.)

Serial No.: 10 / 027,371)

Examiner Robert C. Watson

Filed: December 20, 2001)

Art Unit 3723

Title: Automotive Wheel Assembly Removal
Apparatus)

CERTIFICATE OF FACSIMILE TRANSMISSION UNDER 37 C.F.R.
§ 1.8(a): I hereby certify that this correspondence is being transmitted to
the number identified below and addressed to Mail Stop: NON-FEE
AMENDMENT, Commissioner for Patents, P.O. Box 1450, Alexandria,
VA 22313-1450 on January 16, 2004.

By: Sean M. Casey
Sean M. Casey, Reg. No. 39,514

January 16, 2004
Date Signed

Columbus, Ohio
January 16, 2004

STATUS REQUEST RE 1st OFFICE ACTION**VIA FACSIMILE TO (703) 305-3579**

Mail Stop: NON-FEE AMENDMENT

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Sir:

Applicant has in recent months made many telephonic telephone inquiries to ascertain the status of the above-captioned utility patent application. The general inquiries have been directed to Tech Center 3700 staff at (703) 308-1148. Many months ago, receipt of the Applicant's response dated July 3, 2003 was acknowledged with indications that the papers were being processed for electronic imaging. However, recent inquiries have revealed status of the file is unavailable.

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PATENT
Serial No. 10/027,371
Atty. Docket No. 52484.002 ✓


Please ascertain the current status of the case and notify the Applicant's undersigned representative when possible.

Applicant submits that the invention as claimed is allowable over the prior art of record
5 in view of Applicant's response to the 1st Office Action and respectfully requests an early notice of allowance. Applicant's undersigned representative may be contacted anytime at (614) 933-0100 to advance prosecution of the instant application.

Respectfully submitted,

10 THEODORE J. BERGMAN
JOHN C. HUELSMAN
JON E. BERGMAN ✓

15 BY: STEVENS DAVIS MILLER MOSHER LLP


Sean M. Casey
Registration No. 39,514

20 P.O. Box 710
New Albany, Ohio, 43054-0710
Telephone: (614) 933-0100
Facsimile: (614) 933-0110

25 /sc

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9	1/16 8:21AM	1'14"	7033053579	Send.....	2/ 2	96	Completed.....

Total 1'14" Pages Sent: 2 Pages Printed: 0

PATENT
Serial No. 10 / 027,371
Atty. Docket No. 32484.002

IN THE UNITED STATES PATENT & TRADEMARK OFFICE

Inventors: BERGMAN, Theodore et al.

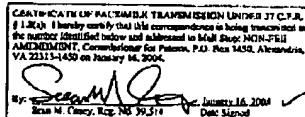
Serial No.: 10 / 027,371

Filed: December 20, 2001

Title: Automotive Wheel Assembly Removal Apparatus

Examiner Robert C. Watson

Art Unit 3723



Columbus, Ohio
January 16, 2004

STATUS REQUEST RE 1st OFFICE ACTION

VIA FACSIMILE TO (703) 305-3579

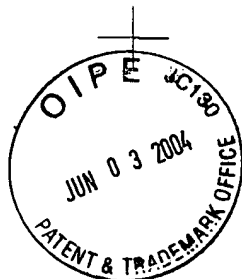
Mail Stop: NON-FEE AMENDMENT
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EXHIBIT B



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